and he was otherwise deformed. In an action by the infant to recover damages it was *Held* that there could be no recovery. *Allaire* v. *St. Luke's Hospital* (Ill.) 56 N. E. 638.

This decision is in accordance with the little authority there is on the subject of the prenatal status of an infant. The ground upon which actions for prenatal injuries are disallowed is that the unborn child is a part of the mother—*pars viscerum matris*. As the court well says, if an action were permissible by the infant in such case, the same principle would permit an action against the mother herself for prenatal negligence. Boggs, J., dissented, and endeavored to distinguish the case from the two opposing cases—*Dietrich* v. *Inhabitants*, 138 Mass. 14, and *Walker* v. *Railway Co.*, 28 L. R. (Ireland) 69—on the ground that in the principal case the hospital authorities, knowing of the condition of the mother, and having invited her to undergo her lying-in at the hospital, owed a special duty not only to the mother but to the child. The ruling of the majority seems the sounder doctrine.

A suit in equity may be maintained, however, by a *prochein ami*, to protect the property interests of an unborn infant. Story, Eq. Pl. (10th ed.), ec. 59 (n).

LANDLORD AND TENANT—DESTRUCTION OF PREMISES—RECOVERY OF UNEARNED RENT PAID IN ADVANCE.—Plaintiff leased of the defendant premises for a certain term at an agreed rental, more than one-half of which was by the terms of the lease payable in advance, and was so paid. The lease provided that in case of destruction of the premises by fire, the rent should be paid up to the time of the destruction and the lease should cease. The premises were so destroyed shortly after plaintiff took possession. In an action to recover the unearned rent paid in advance, it was *Held*, That the plaintiff could not recover—two of the five judges dissenting.—*Werner* v. *Padula*, 63 N. Y. Supp. 68.

The construction placed by the court upon the contract was that under it, the first installment being due in advance, the tenant took the risk of fire so far as that portion of the rent was concerned; that the language of the lease meant that no further payments could be required in case of destruction of the premises, and not that any part of the advance payment should be returned. The construction seems extremely harsh.

INFANTS' CONTRACTS—FRAUDULENT REPRESENTATION OF AGE—TROVER—TORT.—Defendant, an infant, purchased goods from the plaintiff, falsely representing that he was of age. Upon failure to pay, plaintiff brought an action of trover for the goods. *Held*, That the action could not be maintained. *Slayton* v. *Barry* (Mass.), 56 N. E. 574.

The decision is in accordance with the decided weight of authority, and is sound on principle.

Where the real injury is a breach of contract the infant's liability is not altered by bringing a tort action. The inquiry in such cases is not as to the form of the action, but the substantial nature of the wrong.

If the suit be in contract, infancy may be pleaded, notwithstanding credit was extended on the faith of a false statement as to his age. Otherwise, a mere failure to disclose his infancy—whereby he impliedly affirms that he is of full legal capacity to enter into the contract—would itself be fraudulent; with the result

that in the large majority of cases, the infant would lose the benefit of the protection which the law affords him. *Conroe* v. *Birdsall* (N. Y.), 1 Johns. Cas. 127, 1 Am. Dec. 105; *Alt* v. *Groff* (Minn.), 68 N. W. 9; *Magreal* v. *Taylor*, 167 U. S. 688; *Sims* v. *Everhardt*, 102 U. S. 300; 2 Va. Law Reg. 466; note 18 Am. St. Rep. 633.

Nor is he liable in such case in tort for the deceit.

The true principle is that an infant is not liable on his contracts (with familiar exceptions) but he *is* liable for his torts. But to make him liable for a tort, the prevailing nature of the wrong must be tort, and not contract. The law will not permit the plaintiff to deprive the infant of his plea of infancy by a mere change in the form of the action brought. Where an infant obtains credit by a falsehood as to his age, the substantial wrong to the plaintiff is the breach of the contract. Eliminate the contract and there is no wrong. The plaintiff has voluntarily entered into relations with the infant; he had the option to enter or decline to enter into such relations; and the fact that he was induced by a falsehood to enter into the contract, does not change the prevailing nature of the cause of action from a contractual to a tortious one.

On the other hand, where the infant forces the cause of action upon the other party, without the latter's consent—where the wrong has no connection with contract, or so little connection as still to leave its prevailing nature tortious—then infancy is no defense.

Examples illustrating the latter proposition would be assault and battery, trespass upon property, libel, slander, etc.; so, conversion or destruction of property, though it may have come into the infant's possession as bailee of the plaintiff. In the latter case, the cause of action would partake somewhat of the nature of contract and somewhat of tort. The mere failure on the part of the infant to exercise proper care of the property bailed to him, under a contract, express or implied, that he would take due care of it, would not render him liable for its loss—for here he has merely failed to keep his contract. But if, instead of mere failure to care for the property, he should actively injure it, or make way with or destroy it, this would be something more than a mere breach of contract to exercise due care, viz., a tort outside of the contract, for which he would be liable, notwithstanding his infancy. *Vasse* v. *Smith*, 6 Cranch, 226; *Nash* v. *Jewett* (Vt.), 18 Atl. 47; *Prescott* v. *Norris*, 32 N. H. 101; 2 Va. Law Reg. 467.

The liability of an infant for property bailed to him was considered in the recent case of *Young* v. *Muhling*, 63 N. Y. Supp. 181 (March, 1900). The infant hired a team for a specified journey, and by reason of immoderate driving and improper care the team was injured. The court held that unless there were proof of a substantial departure from the specified journey, or some willful and intentional injury amounting to an independent wrong, no recovery could be had. Mere lack of moderation in driving and a failure to observe due care was held insufficient to render the infant liable. Citing *Campbell* v. *Stakes*, 2 Wend. 137; Cooley on Torts (2d ed.) 123.

CRIMINAL LAW—"SUSPICIOUS PERSON."—By Act of Congress, July 8, 1898, it is provided "That all vagrants—all idle and disorderly persons—persons of evil life or evil fame—persons who have no visible means of support—persons repeatedly drunk in or about any of the streets, alleys, roads, highways, or other public